

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 22395 of 2004

Between:

Wg Cdr A.R. Jayakar, S/o. Late Wg Cdr A.V.Rao, (Med) Hindu,
Medical Practitioner, R/o. 128 Vayupuri,
Secunderabad.

..... PETITIONER

AND

- 1 1) ECHS Central Organization, Rep by its Managing Director,
Mande Lines, Opp Old Base Hospital, Delhi Cantt - 110 010
- 2 The Station Commander, Andhra Sub Area Bolaram, Secunderabad - 500 010

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or direction one or more in the nature of Writ of Mandamus by setting aside the order of termination communicated in NO. 1135/E/ECHS dated 11-11-2004 issued by the second Respondent and order continuation of the petitioner and pass such other and further orders

Counsel for the Petitioner: MR.D.MADHAVA RAO

Counsel for the Respondents: MR.ARAJASHEKAR REDDY (SC FOR CG)

The Court made the following :

-

ORAL ORDER:

The case of the petitioner is that he served in the Indian Air Force for 31 years as Medical Practitioner. In pursuance of the interview conducted by the authorities, the petitioner was selected as Medical Officer and the petitioner entered into contract with the 1st respondent-E.C.H.S (Ex-Servicemen Contributory Health Scheme) Central Organization at remuneration of Rs.15,000/- per month. As per the agreement, the 1st respondent may terminate the contract by giving one month's notice. The 2nd respondent issued show cause notice, dated 24.9.2004 to the petitioner with regard to his alleged misbehaviour. The 2nd respondent, even before receiving reply from the petitioner for the show cause notice, issued a letter of termination, dated 11.11.2004. The action of the 1st respondent is totally premeditated. The show cause notice originated from the 2nd respondent on 24.9.2004 and even before the petitioner could give his reply on 4.10.2004, there was a news paper advertisement issued on 3.10.2004, whereunder, the organization decided to engage certain staff on contract basis for a period of one year which speaks loud and clear with regard to the premeditated action. Therefore, the petitioner was removed from service without being

given any proper and fair opportunity, which is against the principles of natural justice. Hence, this writ petition has been filed.

The respondents filed counter affidavit stating that as some feedback has been received from the patients, the petitioner was given performance counselling vide proceedings, dated 21.9.2004 for improvement in relationship skills, but thereafter, due to continued discourteous manner and deliberate obstructive attitude of the petitioner, show cause notice was issued stating that as to why his services should not be terminated as per Clause 8(b) of the Contractual Agreement. Reply to the show cause notice was received from the petitioner on 4.10.2004. As the explanation was not satisfactory in accordance with Para 8(b) of the Contractual Agreement, one month's notice with effect from 13.11.2004 was given to the petitioner for termination of his services. In view of the dissatisfaction among E.C.H.S. members towards the petitioner, the 2nd respondent issued performance counselling on 21.9.2004. However, due to continued unsatisfactory performance of the petitioner and his continued obstructive and negative attitude towards the patients, the petitioner was issued a show cause notice on 24.9.2004 to show cause within 7 days why his services should not be terminated due to unsatisfactory performance of duty as per Para 8(b) of the Contractual Agreement. The 2nd respondent got published an advertisement in newspaper on 3.10.2004, as the selection was required for both Medical Officer In-charge and Medical Officer. The selection is a process, which takes time and the interview was scheduled for 18.10.2004. This advertisement was without prejudice to the petitioner's case as any final decision on appointment of a new Medical Officer would have been contingent only on the services of the petitioner being either continued or terminated. Since the Contractual agreement stipulated minimum one-month notice, it was essential that the patients of E.C.H.S do not face the handicap in the absence of a Medical Officer in the E.C.H.S Polyclinic. The termination has been ordered after following the principles of natural justice. Therefore, there are no grounds to grant interim relief and he

prays to dismiss the writ petition.

Heard the learned counsel for the petitioner and the learned standing counsel for the Central Government and perused the material on record.

The only contention raised by the learned counsel for the petitioner is that the action of the 2nd respondent in giving publication for appointing a Doctor on contractual basis is pre-concluded and pre-judged act because by the date of issuance of notification, the petitioner has not submitted any explanation and therefore, it is unfair on the part of the 2nd respondent to issue such a notification.

On the other hand, the learned standing counsel for the Central Government has contended that it is a process of recruiting a Doctor and the selection of a Doctor on contractual basis will take sometime and the process has been vitiated. Therefore, there is no other reason for the 2nd respondent for pre-determining the issue. Hence, the order under challenge does not suffer from any serious legal infirmity so as to call for interference by this Court.

The facts are in narrow compass. The method of recruitment on contractual basis is not disputed before this Court. As per the contractual agreement, dated 26.4.2004, the petitioner was engaged as Medical Officer for the 2nd respondent-Polyclinic at Secunderabad for a period of 12 months. As per clause 8(b) of this Agreement, the 2nd respondent may terminate the said agreement by giving one month's notice to him or salary in lieu thereof or any of the following grounds for which an opportunity to show cause will be afforded:

- a.
- b. Unsatisfactory performance of duty
- c.
- d.

e.

f.

By invoking clause 8(b) of the Agreement, the 2nd respondent passed the impugned proceedings. The 2nd respondent issued the show cause notice, dated 24.9.2004 for misbehaviour and misconduct of the writ petitioner and called for explanation within 7 days as to why his services should not be terminated as per clause 8(b) of the Agreement. The petitioner gave reply on 4.10.2004.

The only grievance of the petitioner is that before completion of 7 days, before submission of his explanation and before taking any action, the 2nd respondent got issued newspaper publication on 3.10.2004 for filling up of post of Medical Officer on contractual basis. This act, according to the petitioner, is pre-determined act and with a view to terminating the services of the petitioner. No *mala fides* are attributed to against the 2nd respondent who issued show cause notice. According to the respondents, the purpose of giving notice even before termination of contract is that the post of Medical Officer in the Polyclinic cannot be kept vacant as it will cause hardship to the patients attending the 2nd respondent-Polyclinic and giving advertisement is only a process of selection which will take time for interview and that selection would finally depend upon the decision taken by the 2nd respondent whether to continue the petitioner as Medical Officer or terminate him.

The contention of the learned standing counsel for the respondents is that this aspect has some force because E.C.H.S. is a Polyclinic where number of patients would attend. So, when there is no Medical Officer, it will cause great hardship to the patients in the Polyclinic. The 2nd respondent-Polyclinic is meant for patients of Ex-servicemen Contributory Health Scheme. Such is the case, the patients cannot be deprived of the medical services. Therefore, the

intention of the 2nd respondent is not to cause any inconvenience to the patients in view of the fact that a Medical Officer is required to be present on each and everyday so as to look after the patients. For that reason, there is every possibility for the 2nd respondent to give advertisement because the process of selection requires considerable length of time. In case the explanation of the petitioner is acceptable, then, he would have been continued as Medical Officer. In case his services are liable to be terminated, the 2nd respondent has necessarily to make a fresh appointment on contractual basis. Therefore, under no stretch of imagination, it can be said that the act of the 2nd respondent in giving advertisement is done with pre-concluded mind or with a view to terminating the services of the petitioner. It is not as if the 2nd respondent has taken an arbitrary action or without any complaints from the patients. In fact, the 2nd respondent has received a lot of written complaints against the petitioner. Under those circumstances, the action of the 2nd respondent cannot be said to be arbitrary or is done with pre-concluded mind.

For the foregoing reasons, I am of the considered opinion that there are no grounds to interfere with the impugned proceedings, dated 11.11.2004 issued by the 2nd respondent and I do not find any merit in this writ petition.

The writ petition is accordingly dismissed at the stage of admission. In the circumstances of the case, there shall be no order as to costs.

(K.C. BHANU, J.)

20th December, 2004.

Bcj

To

- 1 The Managing Director, ECHS Central Organization,
Maude Lines, Opp Old Base Hospital, Delhi Cantt - 110 010
- 2 The Station Commander, Andhra Sub Area Bolaram, Secunderabad - 500 010.

3 Two C.D. copies